(1)

Supreme Court, U.S.
FILED

00 68 MAR 17 2000

OFFICE OF THE CLERK

No._____

IN THE

SUPREME COURT OF THE UNITED STATES

CRISANTO MENDONCA
Petitioner

v.

JOSEPH MEDEIROS, ET. AL;
Respondent(s)

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit

PETITION FOR WRIT OF CERTIORARI

Crisanto Mendonca
P.O. Box 390944
Cambridge, MA 02139

BEST AVAILABLE COPY

39 pp

QUESTION PRESENTED

Is a civil litigant entitled to post-judgment relief pursuant to Federal Rule of Civil Procedure 60 (b) (6) when post-judgment evidence indicates that the litigant was denied its due process right of law to a fair trial because the court opinion on the merit and jury verdict contrary to the "Substanial" medical damage evidence records relevant to the fact and law.

PARTIES TO THE PROCEEDING

A list of all parties in addition to the parties name do not appear in the caption of the case on cover page whose judgment is the subject of this petiton is as follows: James E. Kilduff, Inc.; Michelle A. Matusewicz, Stephen Norman and Sentry Insurance Company.

TABLE OF CONTENTS

	Pages
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
INDEX TO APPENDICES	iv
TABLE OF AUTHORITIES CITED CASES	v
OTHER AUTHORITIES CITED	v
TABLE OF CITATIONS CASES CITED	vi
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
REASON FOR GRANTING THE PETITION	9
I. The Petiton Should Be Granted Because The Opinion Below Conflicts With This Court's Prior Rulings On The Essential Due Process Right Of A Litigant To A Competent And Impartial Trier Of Fact	9

II. The Petition Should Be Granted Because The Opinion Below Conflicts With This Court's Prior Rulings On The Importance Of Rule 60(b) (6) As A Means Of Effectuating Due Process Rights..... 12

CONCLUSION..... 14

INDEX TO APPENDICES

APPENDIX A...Orders of State Court of Appeals..... 15

APPENDIX B... Orders of State Trial Court and Jury Verdict..... 19

APPENDIX C...Notice of State Supreme Court..... 27

APPENDIX D...Order of U.S. District Court..... 28

APPENDIX E...Orders of U.S. Court of Appeals for the First Circuit..... 29

APPENDIX F...United States Constitution Fifth Amendment..... 3

APPENDIX G...United States Constitution Fourteenth Amendment..... 5

TABLE OF AUTHORITIES CITED

CASES:

OPINION BELOW..... 1

28 U.S.C. S 1254 (1)..... 2

UNITED STATES CONSITUTION FIFTH AMENDMENT..... 3

UNITED STATES CONSTITUTION FOURTEENTH AMENDMENT..... 5

STATUTES AND RULES:

28 U.S.C S 1332 AND FED. R. CIV. PROC. 60 (B)(6)..... 7

OTHER AUTHORITIES CITED:

APPENDIX A...State Court of Appeals, Notice June 8, 1998, Ordered, March 29, 1999 and April 14, 1999..... 15

APPENDIX B...State Trial Court, Ordered, Judgment, Jury Verdict, July 30, 1997, Clerk Notice August 21, 1997, October 9, 1997 and November 14, 1997..... 19

APPENDIX C...Clerk Notice of State Supreme Court, June 3, 1999..... 27

APPENDIX D...U.S. District Court, Ordered, July 9, 1999..... 28

APPENDIX E...U.S. Court of Appeals for the First Circuit, Ordered, December 23, 1999 and February 8, 2000..... 29

TABLE OF CITATIONS CASES: CITED

Jordan v. Commonwealth of Massachusetts, 225 U.S. 167, 176 (1912)..... 9

Tanner v. United States, 483 U.S. 107, 126 (1987) (same). 9

Peter v. Kiff, 407 U.S. 493 (1972)..... 9

Tumey v. State of Ohio, 273 U.S. 501, 523 (1927)..... 10

In re Murchison, 349 U.S. 133, 136 (1955) see also, Aetna Life Insurance Co. v. Lavie, 475 U.S. 813, 822 (1986)... 10

Jordan, 225 U.S. at 176; Peters, 407 U.S. at 501 (citing Jordan); see also, Mcllwain v. Unites States, 464 U.S. 972 (1983) Marshall , J. and Brennan, J..... 10,11

In Liljeberg v. Health Services Acquisition Corp, 486 U.S. 847 (1988)..... 12

Id. at 863-64..... 13

PETITION FOR WRIT OF CERTIORARI

Petitioner Crisanto Mendonca respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The: Ordered judgment of State Court of Appeals, is reprinted in Appendix A, is reported June 8, 1998, March 29, 1999 and April 14, 1999, is unpublished.

The : Ordered judgment of States Trial Court, Jury Verdict, is reprinted in Appendix B, is reported July 30, 1997, August 21, 1997, October 9, 1997 and November 14, 1997, is unpublished.

The: Ordered, Judgment of State Supreme Court, is reprinted in Appendix C, is reported June 3, 1999 , is unpublished.

The: Ordered judgment of U.S. District Court, is reprinted in

Appendix D, is reported July 9, 1999, is unpublished, but can be found at 1995 WL 911759.

The: Ordered judgment of U.S. Court of Appeals for the First Circuit, is reprinted in Appendix E, is reported at 164 F. 3d 480 (1st Cir. 1999) December 23, 1999, is unpublished.

STATEMENT OF JURISDICTION

The Ordered of the U.S. Court of Appeals for the First Circuit ("Court of Appeals") was entered December 23, 1999. The Court of Appeals, Order, denied timely petition for rehearing, February 8, 2000, (Appendix E). The jurisdiction of this Court , is invoked under 28 U.S.C. S 1254 (1).

CONSTITUTIONAL AND PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution Appendix F, provides in relevant part:

> No person shall... be deprived of life, liberty, or property without due process of law..."Federal Rule 60 (b) Mistakes; Inadvertence; Excusable neglect; Newly discovered evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59 (b); (3) Fraud (whether heretofore denominated intrinsic or extrinsic) misrepresentation, or other misconduct of an adverse party; (4) the judgment is void ; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment . The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment , order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation . This rule does not limit the power of a court to entertain an independent action

to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. S 1655, or to set aside a judgment for fraud upon the Court. Writs of coram nobis, coram vobis, audita quenela and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. (As amended Dec. 27, 1946. eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987.)

STATEMENT OF THE CASE

June 8, 1998 State Court of Appeals, Dismissed the Respondent's Appeal. March 29, 1999 Ordered, Affirmed judgment of the Trial Court. April 14, 1999 Order, denied the litigant petition for rehearing. July 30, 1997, State Trial Court , stated I will not issue any directed verdict. The jury verdict finding respondent negligence on Question #1, Question #2, no a proximate cause of injury to plaintiff Crisanto Mendonca and State Trial Court, entered judgment , on the merit. Constitutional Statutory Provision Fourteenth Amendment Appendix G, provides in relevant part: Nor shall any state make or enforce any law nor deny to any person within its jurisdiction the equal protection right of the law. Nor shall any state deprive any person of life, liberty, or property without due process of laws. August 21, 1997 State Trial Court denied the litigant motion for new trial. October 9, 1997, Allowed, the litigant, Notice of

Appeal late. November 14, 1997 Denied, the respondent's Motion to Strike Notice of Appeal late. June 3, 1999 State Supreme Court, Denied, the litigant Application for further Appellate Review. July 9, 1999 U.S. District Court, Order, Dismissed, the litigant civil complaint proceeding. December 23, 1999 U.S. Court of Appeals for the First Circuit, Ordered, Affirmed, Judgment, of the Trial Court. February 8, 2000, Ordered, Denied, the litigant petition for, rehearing. The Fundamental question in this case is whether the litigant is entitled to relief from a judgment, where the District Court lacked impartiality. This case arises under the context of the Fed. Civ. Proc. complaint. Where the litigant fully appreciate the significant of the issues presented, by this case it is essential to consider its lengthy procedure. June 9, 1999, the litigant filed Fed. Civ. complaint seeks Constitutional Statutory Provision Fifth Amendment due process right of law, Appendix F, provides in relevant part: to

presented "Substanial" medical damage evidence records relevant to the fact on the merit of issues which former attorney Mr. A. Fischer improperly misrepresentation, withholding vital discovery documents relevant to the fact against the litigant, Doctor Elaine Woo, Doctor Sharona Soumek, Doctor Joseph Social Security Administration Evaluation Disability Determination. July 28, 1997, Doctor M. Dowds from Doctor Woo's team testimony at State Trial Court and Doctor R. Lager, for Product Liability for the litigant to be compensated for injury, harm suffered from the impact from the respondent's intentional tort a wrongful act negligence finding at State Trial Court refers jurisdiction pursuant 28 U.S.C. *S* 1332, prescribed Federal Rule of Civil Procedure Rule 60 (b) (6) provides: (b) on motion for justifying relief from the operation of the judgment. July 9, 1999 U.S. District Court, Order, entered granting respondent's motion to dismiss the litigant civil complaint proceeding in lieu of answer pursuant to F.R.C.P. 12 (b) (1, 12 (b) (2) and F.R.C.P. 12 (c) "Assuming jurisdiction. December 23, 1999 U.S. Court of Appeals for

the First Circuit, Ordered, Affirmed, Judgment of the Trial Court.

February 8, 2000, Ordered, Denied the litigant petition for Rehearing.

REASONS FOR GRANTING THE PETITION

I.

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE ESSENTIAL DUE PROCESS RIGHT OF A LITIGANT TO A COMPETENT AND IMPARTIAL TRIER OF FACT.

The litigant Crisanto Mendonca petition for writ of certiorari should be granted because the opinion below conflicts with this court's important prior rulings on a litigant's fundamental due process right, to a fair trial. In delineating the contours of this right, this court's has identified necessary elements: "impartiality. "Jordan v. Commonwealth of Massachusetts, 225 U.S. 167, 176 (1912) (holding that {d}ue process implies a tribunal impartiality to afford a hearing.") (emphasis added); Tanner v. United States, 483 U.S. 107, 126 (1987) (same). It is clear that the due process requirement of impartiality applies both to jurors, e.g; Peter v. Kiff, 407 U.S. 493 (1972) (holding that "a defendant cannot, consistent with due process, be subjected to trial by...jurors who are intimidated by the

threat of mob violence, or by jurors who have formed a fixed opinion about the case from newspaper publicity.") (citations omitted), and to judge e.g.; Tumey v. States of Ohio, 273 U.S. 510, 523 (1927) (holding that due process is violated when a defendant is subjected to a judge has "a direct , personal, substanial pecuniary interest in reaching a conclusion against him in a case."); In re Murchison, 349 U.S. 133, 136 (1955) ("no man can be a judge in his own case and no man is permitted to try cases, where he has an interest in the outcome."); see also, Aetna Life Insurance Co. v. Lavoie, 475 U.S. 813, 822 (1986) discussing various cases where due process required a judge to recuse himself from the proceeding).4 With respect to the requirement of "impartiality" this court has held that due process is violated when a decision is rendered by without impartiality jurors. Jordan, 225 U.S. at 176; Peters, 407 U.S. at 501 (due process is violated when a person is "subjected to trial by jurors") (citing Jordan); see also, Mcllwain v. United States, 464 U.S. 972 (1983)

Marshall, J. and Brennan, J.; dissenting from denied of a petition for certiorari) ("This Court as well as other courts have recognized the right of impartiality judges and jury"). The due process clause of the Fourteenth Amendment entitles the litigant Crisanto Mendonca to a impartiality judge who can consider the case, weigh the evidence presented, evaluate the argument of all sides and from conclusions leading to a final decision.

The litigant Crisanto Mendonca petition should be granted so that this court may affirm the importance of its longstanding holdings on due process and so that it may confirm for the first time that the right to impartiality decisionmaker applies to judges.

II

THE PETITION SHOULD BE GRANTED BECAUSE THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRIOR RULINGS ON THE IMPORTANCE OF RULE 60(b) (6) AS A MEANS OF EFFECTUATING DUE PROCESS RIGHTS.

The litigant Crisanto Mendonca petition for writ of certiorari should be granted because the opinion below also conflicts with this court's prior rulings on the importance of Rule 60 (b) (6) as a vehicle to correct violations of a party due process rights.

In Liljeberg v. Health Services Acquisition Corp; 486 U.S. 847 (1988), this court held that Rule 60 (b) (6) may be used to reopen and vacate a final judgment when a party learn, after a judgment has become final, that the judge may not have been impartial.6 The Court explained: Federal Rule of Civil Procedure 60 (b) (6) provides a procedure whereby, in appropriate cases, a party may be relieved of a final judgment. In particular Rule 60 (b) (6)...grants Federal Courts broad authority to relieve a party from a final judgment "upon such terms as are just,"... The Rule

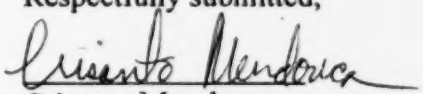
does not particularize the factors that justify relief, but we have previously noted that it provides courts with authority "adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice," while also cautioning that it should only be applied in" extraordinary circumstances."

Id. at 863-64 [footnotes and citations omitted]. In holding that the use of Rule 60 (b) (6) was appropriate, the court weighed "the risk of injustice to the litigant..., the risk that the denied of relief will produce injustice in other cases and the risk of undermining the public's confidence in the judicial process." Id. at 864.

CONCLUSION

Accordingly, the litigant Crisanto Mendonca respectfully request this Honorable Court for impartial judgment for the petition for writ of certiorari should be granted.

Respectfully submitted,



Crisanto Mendonca
P.O. Box 390944
Cambridge, MA 02139

APPENDIX A

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT
CLERK'S OFFICE
1500 New Court House
Boston, MA 02108

June 8, 1998

To: Steven R. Norman, Esq.
Lawrence McAuliffe Law Office
3 Carlisle Road, P.O. Box 586
Westford, MA 01886

Re: 98-P-0479

Crisanto Mendonca

v.

Joseph Medeiros

In accordance with standing order #17A of this court as entered March 22, 1982 (copy enclosed) notice that the subject appeal/ report shall be dismissed for lack of prosecution consistent with said order for the following reason:

APP. A

Brief/appendix not received or status report not filed . Appeals Court, Dismissal under standing order #17A.

Ashley Brown Ahearn, Clerk.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

97- P-2196

Crisanto Mendonca

v.

Joseph Medeiros, et.al.,

Memorandum and Order under Rule 1:28.

There was no error in the order permitting the plaintiff to file a late Noice of Appeal. On the merits of the appeal, the plaintiff have not demonstrated that the judge erred in her evidentiary rulings or other-

wise; in particular , she did not err in admitting as relevant , medical records indicating that the claimed head injuries were not caused by the defendant Joseph Medeiros negligence.

Judgment Affirmed.

Order allowing late Notice of Appeal Affirmed.

By the Court (Kass, Kaplan and Jacobs, J.J.),
Ashley Ahearn, Clerk

Entered: March 29, 1999.

App. A

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

97- P- 2196

Crisanto Mendonca

v.

Joseph Medeiros, et.al;

ORDERED

The petition for rehearing filed by the appellant having been considered, it is ordered, that the said petition be and the same hereby, is denied.

By the Court (Kass, Kaplan and Jacobs, J.J.),
Assistant Clerk

Entered: April 14, 1999

APPENDIX B

MIDDLESEX: SS SUPERIOR COURT

No. 94-1196

Crisanto Mendonca

v.

Joseph Medeiros and
James Kilduff, Inc.;

BEFORE: Sosman, J.
and Jury

July 30, 1997

Court Room 10-A
Middlesex Superior Court
Cambridge, Massachusetts
Official Court Reporter,
Lila Moreau

Jury excused exhibits offered miscellaneous matters

Honor, if there is a dispute. The Court: We will do it before

I bring the jury back. Mr. Fischer: Your Honor, before we do that,

could I move for a required finding of Liability as to the accident itself? There being no evidence, the only evidence there being is that the truck backed into the vehicle. The Court: The credibility and reliability of that evidence is for the jury to determine. I will not issue any directed verdict. Ms. Matusewicz: Thank you, Your Honor. The Court: Do you anticipate any rebuttal witnesses, Mr. Fischer? Mr. Fischer: No, Your Honor. The Court: Okay. Then we will deal with the exhibits.

APP. B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

No. 94-1196

Crisanto Mendonca

v.

Joseph Medeiros
and James Kilduff, Inc.;

Special Jury Verdict

1: Was defendant Joseph Medeiros negligent? Yes

2: If your answer to Q. 1 is yes, was the negligence of defendant a proximate cause of injury to plaintiff Crisanto Mendonca? No

APP. B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

No. 94- 1196

Crisanto Mendonca

v.

Joseph Medeiros, et.al;

JUDGMENT

This action came on for trial before the court and a jury, Sosman, J. presiding and the issues having been duly tried and the jury having duly rendered its verdict, it is ordered and that the plaintiff Crisanto Mendonca take nothing that the action be dismissed on the merits.

Assistant Clerk

July 30, 1997

APP. B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

No. 94 1196

Re: Mendonca v. Medeiros, et.al;

To: Michelle A. Matusewicz, McAuliffe
Law Offices Lawrence, 3 Carlise Road
P.O. Box 586, Westford, MA 01886

CLERK'S NOTICE

This is to notify you that in the above referenced case the court's action on August 21, 1997 is as follows:

Motion for new trial by plaintiff

Motion [P# 37] denied (Martha B. Sosman, Justice) notice sent August 26, 1997.

By: Wayne Emerson,
Assistant Clerk

APP. B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

No. 94-1196

Re: Mendonca v. Medeiros, et.al;

To: Michelle A. Matusewicz
McAuliffe Law Offices Lawrence
3 Carlisle Road, P.O. Box 586
Westford, MA 01886

CLERK'S NOTICE

This is to notify you that in the above referenced case the court's action on October 9, 1997 is as follows:

Motion of plaintiff to file Notice of Appeal late. (appeal) (attached)

(Motion # 39) of plff for Appeals Notice late, is: Allowed. (Spurlock, J.) notice sent October 9, 1997.

By Wayne Emerson
Assistant Clerk

APP. B

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT

No. 94-1196

Re: Mendonca v. Medeiros, et.al;

To: Crisanto Mendonca
P.O. Box 390944
Cambridge, MA 02139

CLERK'S NOTICE

This is to notify you that in the above referenced case the court's action on November 14, 1997 is as follows:

Deft's motion to Strike Notice of Appeal or in the alternative, for reconsideration of plff's motion for leave to file Notice of Appeal late, with request for oral argument, Plff's opposition. Motion #41, of Deft's to Strike Notice of Appeal or in the alternative for reconsideration of Plff's motion for leave to file Notice of Appeal late

with request for oral argument, is:

The Deft's motion to strike appeal is denied. And after reconsideration the Deft's motion to reconsider the Plff's motion to file Notice of Appeal Late is, Denied. (Spurlock, J.) notice sent November 17, 1997.

By Wayne Emerson
Assistant Clerk

APPENDIX C

SUPREME JUDICIAL COURT

FOR THE

COMMONWEALTH OF MASSACHUSETTS

Re: Docket No. F.A.R. 10559

Crisanto Mendonca

v.

Joseph Medeiros, et.al.;

Notice of Denial of F.A.R application. Please take note that the above-captioned application for further appellate review has been considered by the court and, is denied.

Jean M. Kennett,
Clerk

Dated: June 3, 1999

APPENDIX D

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

No. 99-11254

Crisanto Mendonca

v.

Joseph Medeiros, et.al.;

Judge Patti B. Saris. Endorsed Order entered granting [5-1] motion to dismiss in lieu of answer pursuant to F.R.C.P. 12 (b) (1, 12 (b) (2) and F.R.C.P. 12 (c), "Assuming jurisdiction, I allow the motion to dismiss on the ground that this action is barred under the doctrine of res judicata.

By the Court
Deputy Clerk

Entered: July 9, 1999

APPENDIX E

NOT FOR PUBLICATION - NOT TO BE CITED AS PRECEDENT

UNITED STATES COURT OF APPEALS

FOR THE

FIRST CIRCUIRT

No. 99-1879

Crisanto Mendonca

v.

Joseph Medeiros, et.al;

Appeal from the United States District Court for the [District of Massachusetts] [Hon. Patti B. Saris, U.S. District Judge]

Before

Selya, Circuit Judge, Cyr, Senior, Circuit Judge, and Lipez, Circuit Judge.

Crisanto Mendonca on brief pro se.

APP. E

Michelle A. Matusewicz and Law Office of Lawrence F. McAuliffe on brief for appellees

December 23, 1999

Per Curiam After a through review of the record and the submissions of the parties, we affirm on the ground that the District Court lacked subject matter jurisdiction, see District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476 (1983) ('[A] United States District Court has no authority to review final judgments of a State Court in judicial proceedings."); Rooker v. Fidelity Trust Co; 263 U.S. 413, 415-16 (1923) (same).

Affirmed 1st Cir. Loc. R. 27 (c).

APP. E

UNITED STATES COURT OF APPEAL

FOR THE

FIRST CIRCUIT

No. 99-1879

Crisanto Mendonca

v.

Joseph Medeiros, et.al;

Before

Selya, Circuit Judge, Cyr, Senior Circuit Judge and Lipez, Circuit Judge.

ORDER OF COURT

Entered: February 8, 2000

The motion for reconsideration, is denied. The Federal Courts simply have no jurisdiction to review the State Court's decisions, no matter how inadequate appellant claims they may be, and we see nothing in

appellant's most recent submission to convince us that, at bottom he is not challenging the State Court's decision to deny him recovery for his injuries. It is so ordered.

By the Court
Phoebe Morse
Clerk